

RICHARD D. ESPER
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IRVING ALVIN DAVIS	§	
Petitioner,	§	
	§	
v.	§	No. EP:14-CV-121-KC
	§	
WILLIAM STEPHENS,	§	
Director, Texas Dept. of Criminal	§	
Justice, Correctional Institutions	§	
Division	§	
Respondent.	§	

SECOND ADVISORY NOTICE TO THE COURT

TO THE HONORABLE KATHLEEN CARDONE, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS:

COMES NOW, the Petitioner, IRVING ALVIN DAVIS, who by and through his undersigned lawyers files the following Second Advisory Notice to the Court in the above entitled and numbered cause.

(1) Petitioner incorporates herein the matters recited in his Advisory Notice filed with the Court on February 20, 2020.

(2) That on or about February 27, 2020, Petitioner filed a Response to the State Attorney General's Motion to Dismiss Petitioner's previously filed Writ of Habeas Corpus.

(3) That on April 1st. 2020, the Texas Court of Criminal Appeals issued a Per Curium Order dismissing Petitioner's Writ of Habeas Corpus (see attachment).

(4) That on May 6, 2020, Petitioner filed a Motion for Reconsideration with the Texas Court of Criminal Appeals (see attachment). Order has not been received on Petitioner's Motion.

Respectfully submitted,

/s/Richard D. Esper
RICHARD D. ESPER
Attorney for Petitioner

/s/
JOE SPENCER
Attorney for Petitioner
1009 Montana
El Paso, TX 79902
(915)532-5562
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/s/
MATTHEW STIEGLER
Attorney for Petitioner
7145 Germantown Ave., Ste. 2
Philadelphia, PA 19119
(215) 242-1450



COURT OF CRIMINAL APPEALS

P.O. BOX 12308, CAPITOL STATION
AUSTIN, TEXAS 78711

SHARON KELLER
PRESIDING JUDGE

MIKE KEASLER
BARBARA P. HERVEY
BERT RICHARDSON
KEVIN P. YEARY
DAVID NEWELL
MARY LOU KEEL
SCOTT WALKER
MICHELLE M. SLAUGHTER
JUDGES

DEANA WILLIAMSON
CLERK
(512) 463-1551

SIAN SCHILHAB
GENERAL COUNSEL
(512) 463-1597

Wednesday, September 11, 2019

Presiding Judge 384th District Court
500 E San Antonio, Suite 906
El Paso, Tx 79901
* Delivered Via E-Mail *

Re: Davis, Irving Alvin
CCA No. WR-61,445-03
Trial Court Case No. 20010D06419-384-3

Dear Judge:

I have this day received and presented to the Court the 11.071 application for writ of habeas corpus.

Sincerely,

Deana Williamson, Clerk

cc: Richard D. Esper (Delivered Via E-Mail)
Irving Alvin Davis
Joe Aureliano Spencer (Delivered Via E-Mail)
District Attorney El Paso County (Delivered Via E-Mail)
District Clerk El Paso County (Delivered Via E-Mail)
Debra Gibbs (Delivered Via E-Mail)
Edward L. Marshall (Delivered Via E-Mail)



SHARON KELLER
PRESIDING JUDGE

MIKE KEASLER
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DEANA WILLIAMSON
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SIAN SCHILHAB
GENERAL COUNSEL
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April 1, 2020

District Clerk El Paso County
Norma Favela
500 E. San Antonio, Suite 103
El Paso, TX 79901
* Delivered Via E-Mail *

Presiding Judge 384th District Court
500 E San Antonio, Suite 906
El Paso, TX 79901
* Delivered Via E-Mail *

Re: Davis, Irving Alvin
CCA No. WR-61,445-03
Trial Court Case No. 20010D06419-384-3

Enclosed herein is an order entered by this Court regarding the above-referenced applicant.

If you should have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

/s/ Sian Schilhab
Sian Schilhab
General Counsel

cc: Richard D. Esper (Delivered Via E-Mail)
Irving Alvin Davis
Joe Aureliano Spencer (Delivered Via E-Mail)
District Attorney El Paso County (Delivered Via E-Mail)
Lily Stroud (Delivered Via E-Mail)
Debra Gibbs (Delivered Via E-Mail)
Edward L. Marshall (Delivered Via E-Mail)



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-61,445-03

EX PARTE IRVING ALVIN DAVIS, Applicant

ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 20010D06419 IN THE 384TH DISTRICT COURT
EL PASO COUNTY

Per curiam.

ORDER

This is a subsequent application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071, § 5.¹

On June 22, 2002, Applicant was convicted of the offense of capital murder for killing fifteen-year-old M.M. in the course of committing or attempting to commit aggravated sexual assault. *See* TEX. PENAL CODE ANN. § 19.03(a)(2). The jury answered the special issues submitted under Article 37.071 and the trial court, accordingly, set punishment at death. This

¹ Unless we specify otherwise, all references in this order to “Articles” refer to the Texas Code of Criminal Procedure.

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Court affirmed Applicant's conviction on direct appeal but vacated his sentence. *Davis v. State*, No. AP-74,393 (Tex. Crim. App. June 13, 2007) (not designated for publication).

Applicant's punishment re-trial was held in February 2008 and the jury again answered the special issues submitted to it under Article 37.071. Based on these answers, the trial court again sentenced Applicant to death. We affirmed the sentence on direct appeal. *Davis v. State*, 329 S.W.3d 798 (Tex. Crim. App. 2010). We also denied Applicant's initial Article 11.071 applications for writ of habeas corpus regarding the 2002 trial and 2008 punishment re-trial. *Ex parte Davis*, Nos. WR-61,445-01 & WR-61,445-02 (Tex. Crim. App. March 12, 2014) (not designated for publication). This Court received Applicant's subsequent post-conviction application for a writ of habeas corpus on September 30, 2019.

Applicant presents four allegations in the instant subsequent application. In Claim One, Applicant contends that he was denied a fair trial before an unbiased jury because a juror at his 2002 trial, Severiano Santini, did not disclose that: he had been accused of a serious crime; the accusations against him were pending before the same District Attorney's office prosecuting Applicant; and Santini wanted to serve on Applicant's jury to find Applicant guilty and thereby curry favor with the District Attorney regarding his own case. In Claim Two, Applicant alleges that the State's failure to disclose its investigation and eventual prosecution of Santini for aggravated sexual assault of a minor violated Applicant's Fifth, Sixth, Eighth, and Fourteenth Amendment rights to due process and a fair trial.

In Claim Three, Applicant asserts that trial counsel were ineffective for failing to

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challenge the medical examiner's testimony that redness and abrasions in M.M.'s vaginal vault established that the sexual intercourse between Applicant and M.M. was non-consensual. And in Claim Four, Applicant alleges that the State presented false or misleading testimony from the medical examiner that redness and abrasions in M.M.'s vaginal vault established that the sexual intercourse between Applicant and M.M. was non-consensual.

We have reviewed the subsequent application and find that Applicant has failed to satisfy the requirements of Article 11.071, § 5(a). Accordingly, we dismiss the subsequent application as an abuse of the writ without considering the merits of the claims.

IT IS SO ORDERED THIS THE 1ST DAY OF APRIL, 2020.

Do Not Publish

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IN THE COURT OF CRIMINAL APPEALS OF TEXAS
IN AUSTIN, TEXAS

EX PARTE IRVING ALVIN DAVIS,	§	
	§	
	§	CAUSE NO.: WR-61, 445-03
APPLICANT.	§	(TRIAL CAUSE NO: 20010D06419)
	§	
	§	

**PETITIONER'S MOTION FOR RECONSIDERATION ORDER DISMISSING
APPLICATION FOR WRIT OF HABEAS CORPUS**

TO THE HONORABLE JUDGES OF THE TEXAS COURT OF CRIMINAL
APPEALS:

COMES NOW the Petitioner, Irving Alvin Davis, who by and through his undersigned lawyers, file the above captioned Motion in the above entitled and numbered cause and as grounds would respectfully show as follows:

I.

On April 1, 2020, this Honorable Court entered a 3 page Per Curium Order Dismissing Petitioner's Application to file a subsequent application or writ because... the Applicant failed to satisfy the requirements of Article 11.071, §5(a).

The Court's opinion listed the four (4) issues which of were recited in Petitioner's Writ and Amended Writ but never provided an analysis of the facts for the issues nor why the petitioner had failed to satisfy the provisions of Article 11.071, §5(a).

II.

Petitioner requests that this Honorable Court reconsider its Opinion dismissing Petitioner's Application or Writ. In the alternative, Petitioner requests, at the minimum, that the Court provide an analysis of the issues raised by Petitioner and its reasoning for the dismissal.

This is a necessity since Petitioner's 28 U.S.C. §2241 Writ/Petition is still pending in the United States District Court for the Western District of Texas.

III.

The federal court in this case abated ruling on these four (4) issues because they had not been raised in the State Courts and therefore, Petitioner needed to exhaust his State remedies before his Petition in federal court could proceed.

IV.

That if this Court denies Petitioner's Motion for Reconsideration, then Petitioner respectfully requests that in this Court's Order denying the Motion for Reconsideration that Petitioner has "exhausted" his State remedies.

Respectfully Submitted,

/s/
Joe A. Spencer, Jr.
1009 Montana
El Paso, TX 79002
(915) 532-5562
SBN: 18921801

/s/
Richard D. Esper
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/s/
Matthew Stiegler
7145 Germantown Ave, Ste. 2
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(215) 242-1450

CERTIFICATE OF SERVICE

I, RICHARD D. ESPER, the undersigned attorney hereby certify that a true and correct copy of the foregoing Unopposed Motion was electronically filed with Jaime Esparza, District Attorney of El Paso County, Texas, Assistant District Attorney Lily Stroud of the District Attorney's Office, and Attorney, Debra Gibbs, Edward L. Marshal, Siam Sehilhab, on this the 1st day of May, 2020.

Respectfully Submitted,

/s/

Joe A. Spencer, Jr.
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1009 Montana
El Paso, TX 79002
(915) 532-5562
SBN: 18921801

/s/

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